APPROVED WIA WAIVER REQUEST

(This Waiver Request was approved by U.S. Department of Labor on March 17, 2003. A copy of the approval letter is on file with the Missouri Division of Workforce Development.)

Statutory or Regulatory Requirement to be Waived

The State of Missouri requests that 20 CFR, Section 667.160, be waived and the Governor allowed to implement an expenditure-based requirement in addition to the obligation requirement referenced in the regulation.

The current wording of the question, "What reallocation procedures must the Governors use?" along with the wording of the answer to the question, "(a) The Governor may reallocate youth, adult and dislocated worker funds…," limit the Governor's option to impose a reallocation process on the local areas to the obligation-based process outlined in the regulation.

Waiving this portion of the regulations will allow the State to institute its expenditure-based deobligation/reobligation policy at the local level. The Workforce Investment Act (WIA), as passed by the One Hundred Fifth Congress in January of 1998 and the regulations finalized on August 11, 2000, established a process that makes funding available for two years at the local level and three years in total. Success or failure is measured on "obligation" of funds, not expenditure of those funds. In that framework, it made sense to limit the Governor's power to impose additional restrictions on the local Workforce Investment Boards (WIBs).

However, the world has changed in the last two years. The current Congressional intent, as expressed in the Supplemental Appropriations Act, 2001 (Public Law 107-20), is to evaluate WIA's needs based on the rate of expenditure, not the obligation. The administration, in the form of the President's 2003 Budget and the Assistant Secretary's Budget testimony, indicates that funding decreases will maintain the same level of service because they anticipate large amounts of unspent grant funds. These actions, along with the urgency contained in communications with ETA, make it clear that a new method of evaluation is in place for the States. Therefore, it is necessary for the Governor to take steps to ensure that an adequate level of expenditure is maintained by the local areas, as well.

In addition, WIA Title I, Subtitle E, Section 189(g)(2), seems to provide a statutory basis for an expenditure-based evaluation as it states that "no amount of funds described in this paragraph shall be deobligated on account of a rate of expenditure that is consistent with a State plan . . ." The State's deobligation/reobligation policy in effect establishes the State's "rate of expenditure" and was included in the State Plan Modification Number 2, which was recently submitted to the U.S. Department of Labor (DOL) for approval.

Furthermore, Missouri has followed the intent of WIA and prohibited the local WIBs from operating programs themselves. Thus, without this waiver, the WIBs will be virtually fully obligated when they issue their funding to their program operators at the beginning of each program year. This makes the "obligation" requirement meaningless as a tool to ensure that the maximum number of individuals are served with each year's funding.

The impact at the local level will be considerable levels of unexpended funds, which will reflect in the State's overall expenditure level and, in turn, at the national level. Since Congress determines the WIA budget based on expenditure levels, decreases in future funding at all levels will result.

The Supplemental Appropriations Act, 2001 instructs the U.S. Secretary of Labor to report expenditures to Congress. This legislation appears to contradict WIA, which was based on obligations rather than expenditures.

The goal of Missouri's Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act "is to provide an environment which supports a market-driven workforce preparation system, developed locally, that has clear goals and provides accountability to its customers." The goal of Missouri's Waiver Request is to ensure that the programs of the local workforce investment system are fully-funded, implemented and expended so that more customers are provided the services they need to maintain this market-driven system.

Actions the State has Taken to Remove Barriers

On February 6-7, 2002, officials of the Missouri Division of Workforce Development (DWD) attended the U.S. DOL State Administrators Meeting in Chicago. At this meeting, the U.S. DOL Regional Director encouraged DWD to develop procedures to increase local expenditures, since several regions in the State had considerable amounts of unexpended funds. DWD reviewed local expenditures for PY 2000 and PY 2001 and had found that PY 2000 expenditures in some regions were low, but attributed that to the implementation process of WIA. However, when DWD reviewed PY 2001 expenditures, they found that several regions still had very low expenditure levels. DWD realized that the current policy of allowing local regions to expend funds at their own rate, had, in fact, created a barrier for fully implementing WIA in those regions with low expenditures.

As a result of these findings and the meeting with the Regional Director, DWD began procedures to develop a policy that would encourage local expenditures. On April 9th, the Missouri Training and Employment Council (MTEC), the State WIB, approved the current DWD deobligation/reobligation policy (Issuance 18-01, dated April 19, 2002). This issuance is included as an attachment.

Goals and Expected Programmatic Outcomes of this Waiver

The immediate goal of this Waiver Request would be to increase the local expenditure rates to at least the following levels by the end of each Program Year:

Adult	80% of formula funds
Youth	80% of formula funds
Local Administration	80% of formula funds
Dislocated Worker	85% of formula funds

This higher rate of expenditure will result in more clients receiving WIA services, which will then result in improved local and State performance outcomes.

Individuals Affected by the Waiver

Individuals seeking employment and training and businesses would both be affected by the granting of this waiver. Requiring the local WIBs to expend the majority of their formula funds by the end of each year will result in expanded employment, training and employer services, particularly in those regions that had the low expenditure rates.

Processes Used to:

Monitor the Progress in Implementing the Waiver

Should this request be granted, DWD will provide written notice to all regions, including the implications regarding expenditure levels. DWD will monitor the expenditure levels of each region to ensure that they are consistent with the levels established in the deobligation/reobligation policy.

Provide Notice to Any Local Board Affected by the Waiver

Prior to the submission of this Waiver Request, DWD will inform all regions of its intent via a hard copy memorandum, as well as an email memorandum, with this plan attached.

Provide any Local Board Affected by the Waiver an Opportunity to Comment on the Request

A 30-day comment period from the date of written notification will be given to allow local WIBs an opportunity to provide comments on the Waiver Request. Copies of any comments received will be forwarded to the U.S. DOL's regional office in Kansas City.

Ensure Meaningful Public Comment on the Waiver Request

A 30-day comment from the date of publication on MTEC's website will be given to allow the public an opportunity to provide comments on this request. Copies of any comments received will be forwarded to the U.S. DOL's regional office in Kansas City.

Attachment

DWD Issuance 18-01 (Reobligation/Deobligation Policy for Local Areas), April 19, 2002

Attachment

April 19, 2002

DWD ISSUANCE 18-01

Subject: Workforce Investment Act Reobligation / Deobligation Policy

1. Purpose: To provide policy on Workforce Investment Act Reobligation / Deobligation for Local Areas

The Workforce Investment Act provides for de-obligation of funds from local Workforce Investment Areas based upon failure to meet minimum obligation requirements specified in the Act and regulations. The Missouri Training and Employment Council policy which prohibits Workforce Investment Boards (WIB) from operating programs means all the areas by complying with the policy will be virtually fully obligated regardless of their expenditure pattern. The Congress and the US Department of Labor (USDOL) utilized a minimum expenditure requirement of 85% on Dislocated Worker Program as the basis for rescinding Dislocated Worker funds this year and has incorporated projections of unexpended funds into the computation of funding in the President's FY '03 Budget proposal. For these reasons the State feels it is necessary to impose an expenditure requirement on the Local Workforce Investment Areas as a method to ensure that the maximum available funding is provided for Missouri's citizens'.

2. Substance: Each Local Workforce Investment Board for their Title I Adult, Youth, and Local Administration formula funds must expend all funds from any prior year plus at least 80% of their current year allocation by June 30 of each year (September 30, 2002 for PY'01 funds). The Local Workforce Investment Board for their Title I Dislocated Worker formula funds must expend all funds from any prior year plus at least 85% of their current year allocation by June 30 of each year (September 30, 2002 for PY'01 funds). Allocation refers to the local area original formula allocation adjusted as appropriate by transfers between programs that have been approved in the local Workforce Investment Area Plan. The higher expenditure requirement for the Dislocated Worker program reflects the rate USDOL used in their analysis plus it reflects that the State is providing Rapid Response funds to each area for Training which DWD Issuance 18-01 should allow them to attain a higher overall expenditure rate.

These rates are the historical expenditure levels required in Employment & Training programs prior to WIA.

Those WIBs who fail to meet the minimum expenditure levels would have the amount below the minimum expenditure level de-obligated from them. The areas that met or exceeded both their performance numbers and minimum expenditure levels in the prior year would be eligible to receive a portion of these funds. The performance evaluation for the purposes of re-obligation of these funds only shall be based on the fourth quarter performance data, so that the funds are available in a timely manner. The annual performance for all other purposes including the sanction policy shall continue to be based on the final data included in the annual report. If the total amount de-obligated was more than $ 200,000 per program, the state would reallocate by a formula based on their prior year expenditures. If the amount de-obligated was less than $ 200,000 per program, the state would have the discretion to make awards to the highest performing areas. This would prevent the policy forcing the state to make insignificant awards that do not justify the additional work required to accept the funds. A maximum re-obligation of 30% of an area's current year allocation will be applied to ensure that areas receiving additional funds can be expected to expend them during that year. All the substate allocated funds must be allocated to some region so, if the maximum 30% re-obligation would cause any funds to remain unobligated, then the amount to be de-obligated will be reduced proportionally until it equals the amount to be re-obligated.

3. Action: This information should be distributed to appropriate staff.

4. Contact: If you have any questions, contact Steve Kraus at (573) 751-7797 or my office at (573) 751-3349.

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Rick Beasley, Acting Director

RB/RB/dp

c: DWD Admin Group
DWD Central Office Managers
Regional Managers
WIB Chairs
WIB Contacts